

**O'REILLY LAW GROUP, LLC**

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Attorneys for Parties-in-Interest

MARY PETERSEN, INDIVIDUALLY AND AS TRUSTEE OF THE MARY PETERSEN  
 FAMILY TRUST DTD 8/12/98; MICHAEL PETERSEN, INDIVIDUALLY AND AS TRUSTEE  
 OF THE MICHAEL D. PETERSEN FAMILY TRUST DTD 8/12/98; KATHRYN PETERSEN  
 INDIVIDUALLY AND AS TRUSTEE OF THE KATHRYN L. PETERSEN LIVING TRUST  
 AND THE KLP TRUST DTD 7/15/99

**UNITED STATES BANKRUPTCY COURT****DISTRICT OF NEVADA**

In Re:

USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

Case Nos.:

BK-S-06-10725-LBR

BK-S-06-10726-LBR

BK-S-06-10727-LBR

BK-S-06-10728-LBR

BK-S-06-10729-LBR

In Re:

USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

JOINTLY ADMINISTERED

Chapter 11 Cases

Judge Linda B. Riegler

In Re:

USA CAPITAL DIVERSIFIED TRUST DEED  
FUND, LLC,

Debtor.

**DECLARATION OF TIMOTHY  
 O'REILLY IN SUPPORT OF  
 OPPOSITION TO THE  
 APPLICATION OF THE USACM  
 LIQUIDATING TRUST TO  
 COMPROMISE AND SETTLE  
 CONTROVERSIES WITH: PIERCY,  
 BOWLER, TAYLOR & KERN, PC;  
 AND BEADLE, MCBRIDE, EVANS &  
 REEVES, LLP.**

In Re:

USA CAPITAL FIRST TRUST DEED FUND,  
LLC,

Debtor.

In Re:

USA SECURITIES, LLC,

Debtor.

Affects:

- ☒ All Debtors  
☐ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Commercial Mortgage Company  
☐ USA Commercial Mortgage Company

I, Timothy O'Reilly, declare:

1. I am an attorney with the O'Reilly Law Group, LLC, (the "Firm") attorneys of record for Parties-in-Interest, Mary Petersen, Individually and as Trustee of the Mary Petersen Family Trust DTD 8/12/98; Michael Petersen, Individually and as Trustee of the Michael D. Petersen Family Trust DTD 8/12/98; Kathryn Petersen, Individually and as Trustee of the Kathryn L. Petersen Living Trust and the KLP Trust DTD 7/15/99 (collectively, the "Petersens"). I am licensed to practice before the courts of the State of Nevada, the United States District Court, and the Bankruptcy Court for the State of Nevada. I am submitting this Declaration in Support of the Oppositions of the Petersens to the Application of Geoffrey Berman, Trustee ("Trustee") of the USACM Liquidating Trust (the "USACM Trust") and Michael Tucker, Manager ("Manager;" the Trustee and Manager are collectively referred to as the "Trustee/Manager"), of the USA Capital Diversified Trust Deed Fund, LLC ("DTDF") to Compromise and Settle Controversies (the "Motion") with: Piercy, Bowler, Taylor & Kern PC ("PBTk"); and Beadle, McBride, Evans & Reeves, LLP, et al. ("BMER"). I know each of the following facts to be true of my own personal knowledge and, except as therein stated, and if called as a witness, I could and would competently testify with respect thereto.

2. The Petersens are defendants in two separate adversary actions brought by the Trustee for the alleged: avoidance of alleged fraudulent conveyances; aiding and abetting breaches of fiduciary duty; and liability for treble damages for allegedly receiving \$12.8 million, knowing that the funds were misappropriated by theft and/or other offense(s) that constitute a crime against property. See Adversary Actions USACM Liquidating Trust, et. al. v. Mary Petersen, et al, Adversary Proceeding Number 08-01134-lbr; USACM Liquidating Trust, et. al. v. Kathryn Petersen, et al, Adversary Proceeding Number 08-01133-lbr (Collectively, the "Adversary Actions"). Copies of the Adversary Actions are attached as Exhibits "1" and "2," respectively.

3. The Adversary Actions are in the initial stages of litigation, with initial disclosures occurring on September 9, 2008, by the Defendants and September 26, 2008, by the Plaintiffs. Written discovery, specifically requests for production of documents, was only propounded by each side within the last week, and the discovery cutoff date is not scheduled until February 23, 2009.

4. The Petersens vehemently deny the allegations set forth in the Adversary Actions. Nevertheless, to the extent they face any potential liability under the Adversary Actions, the Petersens wish to preserve their claims to mitigate such damages including, but not limited to, any claims for indemnity or contribution.

5. In an attempt to resolve this matter short of litigation, we attempted to obtain clarification of legal authority that the Trustee/Manager was relying upon for the Bar Order and, in response, was merely directed to the Motion. See e-mail correspondence dated October 28, 2008, a copy of which is attached as Exhibit "3."

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed this 6<sup>th</sup> day of November, 2008, in Las Vegas, Nevada.

  
 TIMOTHY O'REILLY